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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,155	11/20/2003	Christopher J. Moran	3433-483	9003
7590 07/10/2008 Woodard, Emhardt, Moriarty, McNett & Henry LLP Bank One Center/Tower Suite 3700 111 Monument Circle Indianapolis, IN 46204-5137				
EXAMINER				
BUL VY Q				
ART UNIT		PAPER NUMBER		
3773				
MAIL DATE		DELIVERY MODE		
07/10/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/718,155

Applicant(s)

MORAN ET AL.

Examiner

Vy Q. Bui

Art Unit

3773

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 27-44 is/are pending in the application.
- 4a) Of the above claim(s) 28, 30 and 34-36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 27, 29, 31-33 and 37-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/06)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Claims 28, 30, 34-36 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 3/23/2007 and is now made final.

Claim Rejections - 35 USC § 102

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

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Claims 27, 29, 31-33, 38, 40, 42-44 are rejected under 35 U.S.C. 102(e) as being anticipated by Babbs et al.- WO98/25544, which is the same as US Pat. 6,475,232.

Babbs-'232 discloses an occluding device including a stent and a cover/graft made of a submucosa such as a porcine submucosa deployed in a blood vessel. Notice that the stent and the cover physically occlude the lumen of the blood vessel to keep the lumen open from a stenosis. Babbs-'232 substantially discloses comminuted submucosa (col. 5, lines 27-39) or sheet like submucosa or injectable/fluidized submucosa (col. 3, lines 42-45).

Notice that Babbs-'232 stent-graft causes a **full occlusion** and a **full blockage** of a vascular vessel because the stent-graft device covers the whole **360-degree circumference** of the vascular vessel. Moreover, Babbs-'232 stent-graft device is at least capable of fully blocking an aneurysm located in a side wall of a vascular vessel, such as an aneurysm shown in F. 7 of the present invention. The term "full" is broad and a "full occlusion" can be reasonably interpreted as an occlusion covering 360 degrees around a blood vessel inner surface and still allow a blood flow in the center portion of the blood vessel's lumen.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 37, 39 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Babbs et al.- WO98/25544, which is the same as US Pat. 6,475,232 in view of Li-5,512,291.

Babbs-'232 discloses substantially the claimed invention, except for a pharmacologic agent, or an antibiotic, or a radiopaque agent. However, Li-'291 discloses radiopaque material BaSO_4 for easy visualization of the device (col. 13, lines 63-65; col. 5, lines 26-27) and an antibiotic for prevention of an infection (col. 5, lines 17-27). It would have been obvious to one of ordinary skill in the art to provide Babbs-'232 a radiopaque agent for easy visualization of the device or an antibiotic agent for treatment of an infection.

Response to Arguments

Applicant's arguments filed 10/12/2007 have been fully considered but they are not persuasive.

As indicated in the above rejection, at least Babbs-'232 stent-graft is capable of causing a full blockage of a vascular vessel or an aneurysm at the wall of a vascular vessel. Babbs-'232 stent-graft is also considered as to cause a full occlusion because Babbs-'232 stent-graft fully occlude the whole 360 degrees of a blood vessel. The term "full" is broad and can be reasonably interpreted as indicated above and the claim language does not require Babbs-'232 stent-graft to occlude the "whole passage/lumen" of the blood vessel.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vy Q. Bui whose telephone number is 571-272-4692. The examiner can normally be reached on Monday-Tuesday and Thursday-Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on 571-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vy Q. Bui/

Primary Examiner, Art Unit 3773